



May 10, 2006

DEVELOPMENT OF AMENDMENTS TO RULES AT 327 IAC 5-4-3, 327 IAC 15-15-11, AND 327 IAC 15-15-12 CONCERNING DATE EXTENSIONS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

#05-322 (WPCB)

Overview

Under the Clean Water Act, concentrated animal feeding operations (CAFOs) are point sources subject to the National Pollutant Discharge Elimination System (NPDES) permit process. This requirement is found in the federal regulations at 40 CFR 122.23(a). The term "CAFO" is defined in 40 CFR 122. This language has been adopted in Indiana and is found in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. On February 28, 2005, the Federal Circuit Court of Appeals, Second Circuit, in *Waterkeeper Alliance, et al v. EPA*, vacated the requirement to apply for a permit. The United States Environmental Protection Agency (EPA) was ordered by the court to amend the federal regulation based on the court's decision. On October 31, 2005, EPA published a notice in the Federal Register (70 FR 62275) proposing to extend certain deadlines contained in the federal regulation while rule revisions required by the court are developed. EPA has now proposed to extend the dates to July 30, 2007.

Citations Affected

Amends language for future compliance dates in 327 IAC 5-4-3, 327 IAC 15-15-11, and 327 IAC 15-15-12.

Affected Persons

Owners and operators of certain concentrated animal feeding operations that would need to comply with the Indiana rule on or before the dates specified in the Indiana rules.

Reason(s) for the Rule

The rule will allow time for the revisions, which have yet to be determined, to the federal rules regarding CAFOs to become effective before current Indiana rule compliance dates become effective for certain facilities.

Economic Impact of the Rule

This rule will have no economic impact to the regulated community or to the state.

Benefits of the Rule

The rule will allow time for the changes to the federal rules regarding CAFOs to become effective before current Indiana rule compliance dates become effective.

Description of the Rulemaking Project

In order for the Indiana rules to be consistent with EPA's stated intention to extend deadlines and amend the federal regulations, Indiana is extending the dates for some CAFOs to submit information to become covered under the Indiana NPDES program. The dates in the Indiana rules are being extended for three (3) years to allow time for the amended EPA regulation to become effective and for Indiana to adopt consistent rules that are at least as stringent as the federal regulations. The Legislative Services Agency made editorial changes to this rule to conform the rule to the Administrative Rules Drafting Manual.

Scheduled Hearings

First Public Hearing: January 11, 2006, 1:30 p.m., Indiana Government Center South, Conference Center Rooms A, Indianapolis, Indiana.

Second Public Hearing: May 10, 2006, 1:30 p.m., Indiana Government Center South, Conference Center Rooms A, Indianapolis, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

By extending the State deadlines in the State rule, there will be time for the State rules to be made consistent with the

federal rules.

Rulemaking Process

The shortened process under IC 13-14-9-7 allows for publication of the draft rule, one thirty (30) day comment period, and a notice of first meeting/hearing. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a

notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.